



(2) Whether the MRI which is marked as Exhibit 5 in the Dr. Phillips' deposition should be admissible as evidence in this matter.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purposes of review and modification, the Appeals Board finds:

(1) Respondent has failed to sustain its burden of proving its entitlement to a modification of the Award dated March 12, 1991 by Administrative Law Judge Floyd V. Palmer under K.S.A. 44-528.

K.S.A. 1992 Supp. 44-528(a) states in part:

"The director shall hear all competent evidence offered and if the director finds that the award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the functional impairment or work disability of the employee has increased or diminished, the director may modify such award, or reinstate a prior award, upon such terms as may be just, by increasing or diminishing the compensation subject to the limitations provided in the workers compensation act."

Respondent argues that Dr. Phillips, after subjecting claimant to numerous tests, has opined that claimant's ongoing psychological problems do not stem from the original accidental injury of July 18, 1988.

Once a finding has been made that a condition is or is not a natural consequence of an injury arising out of and in the course of employment and that finding becomes final for want of an appeal from the final decision, the doctrine of *res judicata* applies and a party is foreclosed from seeking a director's review and modification under K.S.A. 44-528 on the issue of causation. Such finding on the issue of causation is a finding of a past fact which existed at the time of the original hearing and will not be re-litigated. Randall v. Pepsi-Cola Bottling, Co., Inc., 212 Kan. 392, 510 P.2d 1190 (1973).

Respondent's argument that claimant's mental condition is not a result of the original injury is not one which is subject to review and modification under K.S.A. 1992 Supp. 44-528. This issue was litigated at the time of the original award and the claimant's condition has not changed to support review and modification of the original award.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the respondent has failed in its burden of proving entitlement to a review and modification of the award in this matter and the award on review and modification of Special Administrative Law Judge William F. Morrissey on May 2, 1994, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Patrick E. White, PO Box 7156, Kansas City, MO 64113  
Gary R. Terrill, PO Box 12290, Overland Park, KS 66282  
William F. Morrissey, Special Administrative Law Judge  
George Gomez, Director